

March 15, 2020

Brief In Opposition to Motion To Dismiss

Livesay v. Murphy

Case Number 3:20-cv-17947-BRM-TJB

Dear Judge Martinotti,

Enclosed please find a copy of the Brief in Opposition along with attached evidences refuting statements made in the motion to dismiss and evidence that support our claims.

The packet includes:

Brief in Opposition

31 stapled packets of supporting documents.

Flash Drive

Thank You,
Christine Livesay
Nicholas DiSimone

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

Mr. Sarno states that the Covid-19 pandemic has required the State of New Jersey to take unprecedented measures to protect public health and the general welfare of its residents, yet there have been many pandemics in our history, H2N2, H1N1, MERS, SARS Cov1, Spanish Flu, just to name a few, and no action like these destructive Covid-19 policies have ever been taken before. Surely there were other avenues to explore and Governor Murphy could have looked into how previous pandemics were handled, rather than act on projections, assumptions and recommendations that have no scientific proven effectiveness. Governor Murphy simply followed the mistaken lead of other states by mimicking the same exact measures.

Mr. Sarno claims that public health studies and experts have confirmed that placing restrictions on and, at times, even closing, to the public, business premises, where individuals are likely to congregate, helps to limit the spread of Covid-19. Furthermore, he also claims both medical experts and scientific studies have strongly affirmed that mask wearing is an effective mechanism to prevent the spread of Covid-19, which studies show is false.

First, experts can **not confirm** that placing restrictions on businesses can prevent the spread of Covid-19 because this type of mitigation has never been implemented before, for any previous pandemics (i.e. H1N1, MERS) or contagious respiratory virus to compare it to.. Regardless of what measures taken to "prevent the spread," during any disease outbreak in history, it's still a violation of rights to deny individuals of their liberties and from earning an income, which is essential to the very way individuals live and are able to survive, especially when those government officials arbitrarily decide which businesses are essential and non-essential, while, in certain instances, both essential and non-essential businesses sell the same products or offer similar services.

Second, there are thousands of epidemiologists, virologists, immunologists, along with other medical professionals and public health scientists that disagree with these restrictions on businesses and individuals, and further state that those very restrictions are harmful to society, as per one example we used in our complaint, The Great Barrington Declaration, where 55,000 have signed. The level of alternative scientific consensus, contrary to the mainstream view, would be much greater, if it were not for the censorship in the media, which was clearly visible, when examining the medical views of the Frontline Doctors, Dan Erikson from Accelerated Urgent Care in California, and countless other medical and scientific experts.

Furthermore, **scientific studies** regarding mask protection in the past and present consistently prove that masks are **not effective** in preventing the spread of any respiratory virus or flu. In June 2020, Maria Van Kerkhove, the World Health Organization's (WHO) technical lead for COVID-19, publicly stated that asymptomatic spread of the virus is "very rare," so issuing mask mandates—before that statement and, definitely continuing them after that statement, along with business closures and restrictions—on "very rare" occurrences is not only based on wild speculation but lacks adhesion to scientific recommendations, but rather reveals intentional selective adoption of the science. Please see attached study of 10 Million that proves asymptomatic transmission does not exist.

Fourth, Governor Murphy clearly didn't stop to think about the people's constitutional rights and the negative impact and devastation that his unconstitutional EO's would have on the people of New Jersey and the state of New Jersey.

Governor Murphy's efforts to "protect public health" has actually created a public health crisis by subjecting the people of New Jersey to a wide range of mental, emotional and physical health risks, stemming from increases

in job loss, financial hardships, school closures, increased drug addiction and alcoholism, increased domestic and sexual abuse, dangerous mask wearing (proven to be a health risk), increased suicides in children and adults, missed medical treatments and diagnosis for cancer and other illnesses, among other life altering events.

Liberty. The state of being free within society from **oppressive restrictions** imposed by authority on one's way of life, behaviour or political views.

There is no legal precedent or legal authority for the government to "lock down" it's citizens. The United States Supreme Court has ruled in *Shelton v. Tucker* 364 U.S 479 (1960) that the government cannot broadly curtail personal liberty. And there is no legal precedent or authority for locking down healthy citizens. The police power of quarantine is only possible against ill persons. *Jew Ho v. Williamson* 103 F. 10 (1900) and *Wong Wai v. Williamson* 103 F. 384 (1900)

Standard of Review (Federal Rule of Civil Procedure 12)

Mr. Sarno's motion to dismiss this case due to procedural issues and the way pleadings were presented is not an acceptable reason to dismiss our case. The court cannot expect people to know every aspect of the law and not everyone can afford a lawyer. Dismissing our case due to lack of perfection, according to "proper procedure," would display that one can only seek due process if they know every rule of law or retain an attorney. It shouldn't be satisfactory to the court for citizens to assume the judicial system is intentionally designed this way, as to deter citizens from exercising their rights. Dismissing our case would deny our rights to a fair, public hearing which is a constitutional guarantee, as outlined in the Sixth Amendment of the U.S. Constitution, which all government officials swore an oath to uphold. Furthermore, dismissing our case would only delay the inevitable that this case will wind back up in front of the courts.

When Governor Murphy executed EO 107 he violated due process of the Fifth and Fourteenth Amendment and the equal protection clauses of the Fourteenth Amendment. The Governor is bound to these laws and must uphold the Constitution. When the Governor executed EO 163 he violated the Plaintiff's right to self determination over their own body's (Bodily Integrity), of the Fourteenth Amendment and further put their mental, emotional and physical health at risk by doing so.

Due process is the legal requirement that the state must respect all legal rights that are owed to a person. Due process balances the power of law of the land and protects the individual person from it. When the government harms a person, without following the exact course of the law, this constitutes a due process violation, which, in turn, violates the rule of law. The Fifth Amendment tells the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. When Governor Murphy executed EO 107, he denied that legal right to due process to Ms. Livesay, depriving her of her business—essential to her life—other business owners and other working citizens.

Mr. Sarno essentially claims that because these EOs are applied "**equally**" to everyone that no individual can claim personal injury. However, these EOs were **not** applied **equally**, because there were businesses "permitted" to remain open, while others were ordered closed. Additionally, the same covid guidelines that are being followed today for similar businesses as Ms. Livesay's were the same guidelines able to be followed to Ms. Livesay's business during the three months it was forced to close. Regardless, it is still a constitutional

violation to place any restrictions on her liberties and her earning an income, especially her own business, which is her property, without her consent. Furthermore, while allowing big box stores like Walmart and liquor stores to remain open, it's an insult to any intelligent lifeform that has the ability to discern glaringly obvious hypocrisies.

Mr. Sarno also made false statements in his Motion to Dismiss, when he claimed that Ms. Livesay and Mr. DeSimone never provided Governor Murphy with fair warning that his conduct was unconstitutional when, in fact, Governor Murphy was notified and served affidavits from both Ms. Livesay and Mr. DeSimone (who is not Christine Livesay's son, as incorrectly noted on Mr. Sarno's Motion to Dismiss) on November 19, 2020, notifying Governor Murphy of his constitutional violations, which was included in the complaint along with a receipt of service, of which they have a record. Governor Murphy completely ignored their affidavits and never rebutted their claims and, by not rebutting, he tacitly agreed to the facts, written there within, as stated in the affidavit.

Mr. Sarno also claims that they did not request an oral argument. However, there were not any options on the Pro Se Litigation packet to request an oral argument so please consider this a request for an oral argument. They did request a jury and fully expect this case to be heard before a jury of their peers, to ensure the fairest due process as humanly possible.

Article III Standing

Mr. Sarno claims that Ms. Livesay's and Mr. DeSimone's complaint lacks standing because they can not demonstrate any specific **injury, in fact**. The injuries that Ms. Livesay has suffered is more than clear throughout the complaint, when she described the devastating financial loss that EO 107 caused, along with the stress, anxiety, mental and emotional effects that were triggered by her financial loss. The mental, emotional and physical harm to her offspring when Governor Murphy executed EO 104, forcing her offspring into isolation and EO 163 (masks), which both she, her offspring and Mr. DeSimone stated restricted vital oxygen to the body, triggered vehement verbal attacks on them, and in some cases being denied service, in places of public accommodation. These are all psychologically damaging, life altering events that affect every aspect of the way they live and it is truly unfathomable that Mr. Sarno is claiming that the harm—that was and still continues to be—caused to them is not "concrete" and "does not actually exist." And, as mentioned previously, just because the harm affected everyone does not negate the fact that harm was done, which is personal, in fact, to every individual, affected by the Governor's EOs.

Mr. Sarno states that, in order to seek injunctive relief, it must be shown that Ms. Livesay and Mr. DeSimone are "under a threat of suffering" and that there is a "real and immediate threat of repeated injury." As stated throughout our Complaint, they can not breathe while wearing a mask, amongst other health risks that the mask poses and the constant attacks from employees in places of public accommodations prove the real and immediate threat of repeated injury. They feel that they cannot live their lives, get anxiety and feel depressed when they have to go to the store for even basic necessities, let alone trying to enjoy a movie, bowling or dining in a restaurant. This does constitute an "immediate **repeated** threat" that causes suffering on a daily basis, especially when those establishments are under the threat of coercion, if they don't comply with the covid guidelines, which some establishments are upgrading enforcement, beyond what is necessary, due to the Governor's EOs.

Additionally, Ms. Livesay's business has suffered tremendously even after reopening, due to the way Governor Murphy continues to treat Covid-19 in New Jersey, as if it is a deadly plague. Also, due to the wrecked economy that Governor Murphy created through EO 107, it bankrupted businesses and caused tremendous job loss in New Jersey, and people don't have money to spend. Another immediate repeated threat is Ms. Livesay's offspring not being in school which has caused severe mental disorders and threatens the very success and future of her offspring.

Mr. Sarnos States that all those in New Jersey are exposed to the same environment regarding mask wearing, which makes the situation worse because he has violated all New Jersey residents Bodily Integrity rights that are protected under the Fourteenth Amendment of the United States Constitution, and has subjected them to numerous dangerous health risks that masks pose to their physical, mental and emotional health. It is a complete crime against humanity. Governor Murphy and Judy Pesichilli should be held personally responsible for any injuries that are caused by the masks, including discrimination in places of public accommodations, verbal and physical attacks.

Furthermore, surgical masks are regulated by the Food and Drug Administration and are considered medical devices, therefore by Governor Murphy requiring millions of people to wear surgical masks he is assuming the role of a licensed medical professional which is illegal and a third degree crime. Governor Murphy is in violation of practicing medicine without a license as per section 2C:21-20 unlicensed practice of medicine, surgery, podiatric medicine crime of the third degree of the 2013 New Jersey Revised Statutes Title 2C- THE NEW JERSEY CODE OF CRIMINAL JUSTICE. Additionally, by requiring people to wear a medical device, EO 163 also violates another federal law, informed consent. *Shinal v. Toms*.

Mr. Sarno states that, if there were an injunction that it wouldn't necessarily prevent local authorities and establishments from enforcing masks. However, if he can sign an EO requiring masks, he can easily sign an EO not requiring masks and local authorities and businesses would follow, just the same as they do when it is required to wear a mask.

The only reason that establishments started enforcing masks to begin with was because of Governor's Murphy's EO 163, which forced all establishments to implement mask wearing, with the threat of enforcement through fines, business closures and revoked licenses, which only then and still continues to compel businesses to strictly enforce mask policies. This is a clear and obvious example of the government using coercion to impose unconstitutional, harmful policies on Ms. Livesay and Mr. DeSimone, as well as the general public. It is an unconstitutional, immoral and unlawful act and no government or establishment should have the right to force one to cover their face with a mask that blocks their airways and verbal communication in order to attend school, work or enter a place of public accommodation. Executive Order 163 must be rescinded immediately. It is causing tremendous harm in countless ways, as outlined throughout this statement and complaint. Mask wearing should be a personal choice, not be **forced** upon the public and must require informed consent.

Mr. Sarno claims that Mr. DeSimone did not mention a specific religion when claiming that his religious rights were violated, under the First Amendment of the US Constitution. While the true definition of "religion" says nothing to the specificity of any specific religion and, in fact, is defined by Merriam-Webster as, "a personal set or institutionalized system of religious attitudes, beliefs, and practices." So when Mr. DeSimone stated, "my religious beliefs do not support this type of death cult behavior and it is truly satanic," this statement meets the criteria for the definition of religion and demonstrates a clear violation of his religious rights.

Furthermore, when referencing religion, the Constitution does not list specific religions that are protected because listing them would be exclusive toward any specific religions any individual possesses, which is why the wording [religion] is broad and applicable to anyone that has any religious beliefs. In other words, the Constitution doesn't include "freedom of Christianity, Buddisim, Catholicism, etc" because that would be exclusionary to anyone that has any other religious beliefs. It was left open for anyone to apply their own religion so all religions are protected and Mr. DeSimone is not required to specify which religion he follows, in his claim.

Due Process Claim

Mr. Sarno states that there were other procedural remedies available to Ms. Livesay and Mr. DeSimone, prior to filing this complaint and that they could "plainly have appealed the unconstitutional EO's in the Appellate Division", as if it were common knowledge. They did, however, serve Governor Murphy two affidavits notifying him of his unconstitutional violations and did not receive a response, which Mr. Sarno keeps conveniently not acknowledging. Additionally, they should have every right to file a complaint and don't see how it's a problem if that's the method they chose to use, especially considering the severity of their complaint.

Mr. Sarno states that EO 107 did not violate Ms. Livesay's procedural due process rights—a fundamental, **constitutional guarantee** that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard before the government acts to take away one's life, liberty, or property—a **constitutional guarantee** that a law shall not be unreasonable, arbitrary, or capricious. The Constitution is clear: EO 107 did violate Ms. Livesay's rights; it was absolutely unreasonable, arbitrary and capricious. The state did not use any process or procedure before stripping Ms. Livesay of her liberties, granted to her under the law. There is no law, EO, public health emergency/mandate, or store policy (in this applicable case) that surpasses Ms. Livesay's constitutional rights.

Substantive Due Process

Mr. Sarno claims that in order to demonstrate a violation of substantive due process, Ms. Livesay and Mr. DeSimone would have to prove Governor Murphy's conduct was "conscience shocking" and that Governor Murphy violated one or more fundamental rights "deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty." It is clear that Murphy's unjust EO 107 was "conscience shocking" because Ms. Livesay felt **violated** when she knew **her liberties were taken away** by EO 107, which also prevented her from earning an income for over three months, which was grossly unjust because it denied her the right to earn an income.

The government does not have the right to decide whether or not she can earn an income or dictate whether or not she can provide food for her offspring, pay her rent, phone bills, gas and electric, water, several types of insurances, car payment, cable and internet etc., and that's just her personal expenses. She also has business expenses that she was not able to pay. EO 107 caused severe stress and anxiety and tremendous financial harm to her and her offspring. It is truly inconceivable what Governor Murphy did to Ms. Livesay and hundreds of thousands, if not millions of others. There is no justifiable excuse for his actions so, altogether, this clearly meets the definition of "conscience shocking."

With respect to the violation of "fundamental rights," specifically, liberty, due process of law and freedom of religion—deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty—are their fundamental rights, not to mention their basic human rights, bodily integrity that were violated as

mentioned previously in this response, the original complaint, and both affidavits, officially sent to Governor Murphy, the same affidavits Mr. Sarno keeps conveniently choosing to not acknowledge, on the official record.

Mr. Sarno claims that Covid 19 spreads among asymptomatic carriers and there remains no proven cure for covid 19, when in fact, studies show that asymptomatic spread does not exist or is extremely rare, which many medical experts and scientists agree (as mentioned previously in this statement); and, also there is no cure for most respiratory viruses or seasonal influenza, just treatments for symptoms and their are treatments for covid 19 which Governor Murphy and Judy Persichilli conveniently ignore.

Mr. Sarno states how other businesses ordered closed by EO 107 brought comparable claims to the courts and Judge Kulger **quickly disposed of them**. It is a grotesque dereliction of duty how some judges in these courts are treating people like they are insignificant and trying to justify violating their rights due to a "public health emergency" by being so quick to dismiss the legitimate, scientifically proven, constitutional claims brought by plaintiffs in some cases, cited by Mr. Sarno.

Pennsylvania Judge William Stickman IV, of District Federal court has ruled that business closing orders have violated the Due Process Clause of the 14th Amendment and the Equal Protection Clause of the Fourteenth Amendment.. Stickman wrote in his rulings that the Pennsylvania Governor and his administration's pandemic policies have been overreaching, arbitrary, and violated citizens constitutional rights.

Fourteenth Amendment the Right to Bodily Integrity

A human right to self determination over one's own body. EO 163 denies an individual the choice to self determination over their own body when they are forced to wear a mask against their will in order to conduct their affairs and live their lives as they did previously before EO 163. The government does not have the right to force masks on any man, woman or child's face, which block both airways and make it difficult to breathe. It is immoral and intrusive. A "public health emergency" does not void the right to bodily integrity nor does it excuse the fact that masks pose numerous dangerous health risks. **It is unjustifiable.**

Mr. Sarno states that it is abundantly clear that the Governor's order protects "public health," when in reality, covid-19 is no more than a typical respiratory virus that can sometimes be deadly to people with compromised immune systems. Survival rates, according to the CDC, as noted in Plaintiff's Complaint, are 0-19 (**99.997%**), 20-49 (**99.98%**) 50-69 (**99.5%**) 70+ (**94.6%**). A war is an emergency; a tsunami is an emergency; a level 5 hurricane is an emergency; a virus that exhibits these kinds of survival rates could never be justified as an emergency, according to any scientific standard on planet Earth so no emergency powers, and subsequent EOs, by Governor Murphy are justified.

In 2019, 1.4 million people died from tuberculosis (TB) and an estimated 10 million cases. TB is one of the top 10 causes of death. It is extremely contagious and can be spread through aerosol droplets, and surfaces. H1N1 is also deadly and contagious, 1,200 children died in one year compared to 201 from Covid 19. The seasonal flu is also deadly, contagious and can be contracted through aerosol droplets and surfaces. The flu affects children as well as the elderly, where covid 19 mainly affects the elderly population and people who have compromised immune systems. FACT- Covid and the seasonal flu have the same mortality rate. So it is safe to say that there continues to be an extreme over exaggeration about covid 19 in New Jersey. The list can go on and on about viruses and diseases that are just as severe and even more lethal and contagious than covid 19. These statements are all based on verifiable facts.

Mr. Sarno claims that Ms. Livesay and Mr. DeSimone are underplaying the severity of covid 19 and that there have been over 27 million cases and 450,000 deaths. When it can easily be argued that those statistics are extremely flawed and inaccurate due to a number of **facts**. It is a well known fact that the PCR tests are not gold standard and were only approved for emergency use. Additionally, PCR testing is extremely sensitive and if labs are using a cycle threshold (CT) of over 30 there can be up to a 97% false positive result, which is the precise reason that on December 3, 2020 Governor Disantis of Florida mandated that all labs must report the CT count. Additionally, a Portugal court ruled the PCR test not reliable.

On March 24th 2020, the CDC illegally changed the way death certificates are recorded, significantly altering death certificate reporting, which the CDC did to ensure the cause of death was covid-19. Please refer to Page 2 and 7 of Science, Public Health Policy, and the Law IPAK document.

On April 14, 2020 the CDC guidelines again compromised data collection that canceled out standard medical practices which categorized (probable) cases where hospitals and doctors can diagnose individuals with covid **without** proof of infection through positive lab results. They are definitely doing this in New Jersey because it happened to a friend of Ms. Livesay's and their son at Robert Wood Johnson Hospital, in Somerville, New Jersey, so she has a first hand knowledge of this happening in NJ. Please refer to page 13 of the Science, Public Health Policy, and Law (IPAK) document

.Medical malpractice- A Doctor or other medical professional that acts or fails to act in a manner consistent with the acceptable standard in such a way that causes injury to the patient.

Injury- Being told to quarantine for 14 days and possibly losing income or your job.

From April 14, 2020 till July 16, 2020 the CDC actively promoted a test based strategy for diagnosis, meaning everyone should be tested regardless of the presence or absence of symptoms which paved the way for New Jersey to employ untrained, medically unlicensed contact tracers to illegally diagnose patients without any medical examination or confirmed laboratory test and can even do so without even seeing or talking to a person, which is the exact methodology New Jersey is practicing with their contact tracing program. Under any other circumstances, under the guidance of a licensed medical professional, this can be construed as medical malpractice. Please refer to page 13 of the Science, Public Health Policy, and Law (IPAK) document..

On June 13, 2020 CDC initiated a PCR based strategy requiring all patients that need hospitalization for any reason at the time of entry to be tested regardless of symptoms. A patient testing positive is categorized as a new positive Covid 19 case and hospitalization. Patients testing positive are required to be PCR tested every 24 hours till they have 2 consecutive negative results. There are no data guidelines from the CDC to prevent the same patient from being counted multiple times as a new positive case as well as a new hospitalization covid case multiple times during one infection, and that's even assuming the PCR is accurate, which has been proven to be inaccurate. Is New Jersey doing this? Please refer to Science, Public Health Policy, and the law. IPAK documents, page 5, under June 13, 2020.

Please refer to flash drive where the Ohio governor breaks some but not all of these guidelines down in a news conference. New Jersey only recently started accurately reporting (in January 2021) reporting antigen tests separately in the covid case statistics and listing PCR tests administered.

All PCR and antigen tests are only authorized for emergency use and are inaccurate at diagnosing covid 19. The tests being used bypassed proper protocols and do not meet certain requirements required by federal law. The tests detect other viruses and bacterial infections and can easily produce false positive results. Additionally, these inaccurate tests are designed for testing people **displaying symptoms**. Please refer to FDA, EUA documents.

Astonishingly, Governor Murphy and the NJDOH's Judy Persichilli continue to publicly state, on a regular basis, that people get tested, even if they have no symptoms and completely ignore all the aforementioned facts; and yet, they still use these inaccurate statistics of cases and deaths to implement unconstitutional, unreasonable, unscientific and unnecessary destructive covid 19 policies that have had severe damaging effects on people's lives.

- On November 11, 2020 Portugal court ruled PCR test unreliable.
- On January 20, 2020 The World Health Organization finally admitted that when using PCR testing higher cycle threshold can produce false positive results.
- The inventor of the PCR test Kary Mullis who won a Nobel prize in chemistry stated his own creation, the PCR test, was inappropriate to detect viral infection.
- Dr. David Rasnick, biochemist and protease developer warns, "I'm skeptical that a PCR test is ever true. It's a great scientific research tool. It's a horrible tool for clinical medicine."

But yet Governor Murphy and Judy Persichilli continue to say they are following science.

Furthermore, the CARES Act provided \$100 billion in funding to hospitals and other health care providers fighting covid-19. This created a perverse financial incentive for these providers to falsely report covid cases, so they could receive more funds from the CARES Act, while charging public and private insurance more money for more expensive treatments, which in most cases, are killing "covid" patients, due to medical staff using unnecessary intensive ventilators.

Mr. Sarno states that six foot distance and mask wearing have been effective in preventing the spread of covid 19 but yet there has not been one study that proves his statement to be true.

EO 163 does violate bodily integrity under the Fourteenth Amendment and as reiterated throughout the complaint, affidavits and this response, masks pose a range of dangerous health risks to the wearer and by forcing people to wear them is a complete act of torture, abuse and terrorism. The masks are making healthy people sick. It is indisputable.

Governor Murphy is a domestic terrorist that has no consideration for the people of New Jersey or the State or National Constitution.

Takings Clause

Mr. Sarno claims Governor Murphy did not violate the "Takings Clause" when he executed EO 107 because he did not physically take over Ms. Livesay's property, which is a feeble attempt to minimize the obvious truth. Mr. Sarno argues that the "Takings Clause" was not violated because the challenged laws were a mere exercise of police power to protect public health and that EO 107 merely affects the permissible uses of private property

and does not amount to a physical taking. Stating that a "towns emergency action to temporarily close" Ms. Livesay's facility "due to **safety concerns**" reflected an exercise of police power that did not require just compensation" Forcing Ms Livesay's business closed in order to "protect public health" does not protect public health and to say that Ms. Livesay's facility is unsafe is a complete assumption and flat out lie.

When Atilis Gym owners kept their business open to the public exercising their constitutional rights that were being violated by EO 107, Governor Murphy responded by stripping them of their business licence, used the Health Department to go after them, bombarded them with fines, boarding up the entrance to their facility and ultimately arresting them. While this was not a physical taking per say, that was certainly the end result. Clearly, Governor Murphy wanted to make an example of them so other business owners could see what would happen to them if they tried the same thing. In addition to that, Governor Murphy's office, disturbingly, even went as far as setting up a hotline and website that encouraged people to report businesses that were violating his draconian rules.

Mr. Sarno states that it is well settled that the state may require closure for **dangerous facilities** or prevent the public from **dangerous items**, without having to provide compensation. He uses the examples ``**prohibiting access to crime scenes, violating health codes, fire damaged buildings** that have long been considered permissible exercises that do not entitle individuals affected to compensation. (Adding that "the legislator may make police regulations, although they may interfere with the full enjoyment of private property and though no compensation is given") This is the only possible result: otherwise law enforcement can never **lock down a crime scene or ban individuals from processing dangerous items like chemicals, bombs, drugs or wild animals** without paying the owners. - First, in order for the state to require Ms. Livesay's facility to close, the state must provide **evidence** that **danger** actually **exists** at her facility in order to deem it unsafe. But the state **did not** provide any **evidence** of danger. It was based solely on pure assumption. Therefore, this act can not be justified and the excuse "public health emergency" can not apply when based on pure assumption. Compensation is due.

Additionally, If it were a true public health emergency then why were big box stores open? such as Target, Walmart, HomeDepot, Lowes ShopRite, Costco, liquor stores, Pet Shops and restaurants for curbside, where hundreds and thousands of people were able to shop everyday. There is no justification for executive order 107. It is unconstitutional, unreasonable, arbitrary and biased.

Mr Sarno claims that person to person contact contributes to the spread of a lethal disease in indoor spaces that are open to the general public, when it can easily be argued that a customer checking out at a register at any of the above mentioned "essential" businesses is also person to person contact. In addition to that, there are hundreds and thousands of interactions per day in just one facility compared to Ms. Livesay's facility that would have just a few interactions per day.

Mr. Sarnos states that if Ms. Livesay's case were successful "it would have far reaching and debilitating effects on the state's ability to respond to the pandemic or similar public health emergencies because labeling the Governors order "**Taking**" would require the state to compensate every individual or property owner who's property use is restricted for the purpose of "protecting public health". However, if the courts do not hold Governor Murphy accountable and do not compensate business where "just due compensation" is in fact due, that would indeed have far reaching and debilitating effect on people's businesses and private property use in the future and give the government a green light to continue to restrict people's private business and property whenever they see fit without being held accountable and furthermore destroying peoples livelihoods, crippling

the economy and bankrupting their businesses which is exactly what has happened in the recent case of EO 107.

Covid 19 can easily become an annual virus just as all coronaviruses are along with the seasonal flu .Which raises the question. Will EO 107 become an annual occurrence for covid 19 or another new virus that surfaces? Mr. Sarno's statement "would have far reaching and debilitating effects on the state's ability to respond to the pandemic or similar health emergencies" is very concerning.

Federal Conspiracy 42 U.S.C 1985(3)

Mr. Sarno alleges that Ms. Livesay and Mr. DeSimone did not have sufficient grounds to bring claims under 42 U.S.C. § 1985(3). However, this is not accurate. In fact, they believe they sufficiently meet the criteria to bring a claim under this section because 1) Governor Murphy conspired with Judith Persichelli, New Jersey Department of Health Commissioner by acting upon her one-sided scientific personal medical beliefs—that ignored multitudes of other scientific consensus, contrary to mainstream findings on Covid-19 and Ms. Persichilli's recommendations to the Governor—and implementing those unconstitutional, unlawful covid restrictions, specifically business and school closures to Ms. Livesay and mask mandates to both Ms. Livesay and Mr. DeSimone, which 2) was motivated on a class-based level, by assuming them to be harboring a virus, the class upon which this discrimination took place and subsequent deprivation of equal protections of the laws due to the fact that people who accept the possibility of having the virus (treated one way) versus other people (such as the Plaintiffs) that do not want to live their lives assuming they have a virus or fearing a virus and deprived as such.

In other words, they should not have to follow along with the covid restrictions based on the idea that they are to be assumed to be harboring a virus, because the Governor and Judy Persichilli want 9.2 million people to act as if they are infected with a virus. Furthermore [directly addressing Mr. Sarno's comment, p.29, Motion to Dismiss], 3) Governor Murphy (and Judith Persichilli) acted in furtherance of the conspiracy, by continuing to implement these measures (until present day), based on one-sided scientific information, devoid of any other valid alternative, accredited input from the scientific/medical community and obvious false covid statistics. Lastly, 4) the injury to person or property or the deprivation of any right was made abundantly clear when stating that Ms. Livesay was not, paraphrasing Mr. Sarno's term (permissible) "permitted," to use her own private property, her business, which is still an indirect, unlawful confiscation of private property. Additionally, the injury to both Plaintiffs was made abundantly clear when elaborating on the psychological damage due to the mask mandates and other destructive covid policies imposed upon them by Governor Murphy, working in tandem with Judy Persichilli.

Qualified Immunity

Mr. Sarno claims that this case lacks standing and that the claims fail to state a claim upon which relief can be granted. When the constitutional violations can not be more clear. The relief requested can not be more clear. Mr. Sarno states that Ms. Livesay and Mr. DeSimone failed to adequately allege the violation of legitimate right at stake let alone "clearly established" law that was sufficient to provide the Governor with fair warning that his EO's were unconstitutional. This is totally inaccurate, because the affidavit, mentioned multiple times in this response alluded to their "warning" that the Governor's actions were unconstitutional.

Furthermore, this statement is a bit confusing: because if Mr. Sarno is assuming they should have given "fair warning" to Governor Murphy's announcement that would violate the Plaintiffs' constitutional rights, and, for

example, if he were to hold a public comment period in which they could give that “fair warning;” but then, according to the logic of Mr. Sarno, no such public comment period (aka fair warning) can exist because that would interfere with the necessary swift, decisive actions required by a public health emergency; however, respecting the fact that those types of swift, decisive actions violate Plaintiffs’ 14th Amendment rights to due process before violating such rights, it is literally impossible to provide such “fair warning” because the very act of issuing an EO that deprives rights without due process is a clear constitutional violation.

Additionally, Governor Murphy demonstrated knowledge of his continued wrongdoing, negating notions of qualified immunity, when he first mentioned 15 days to slow the spread of covid-19, but as the spread declined, his covid guidelines did not fairly match that fluctuation.

Qualified Immunity shields government officials who perform discretionary functions “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. The constitutional rights violations are clear and a “reasonable person” who swore an oath to the Constitution would recognize this when Plaintiffs’ (among the class of others affected by these covid policies) rights to due process, private property, bodily integrity, religious convictions were violated, as outlined in this response, in great detail.

Mr. Sarno also cites it thus “gives government officials breathing room to make reasonable but mistaken judgements, it protects all but the plainly incompetent or those who willingly violate the law” among other qualified immunity claims through his Motion to Dismiss. However, one simple fact that can refute any remaining qualified immunity claims that Mr. Sarno is claiming for the Governor is the fact that EO 107 deemed businesses like Ms. Livesay’s as non-essential and were ordered closed, while liquor stores were allowed to operate and stay open during this supposed public health emergency. Not only could any “reasonable official” see the contradiction with this action but any competent individual could, as well.

Additionally, if those officials weren’t sure and needed a reference to compare those business closure, stay-at-home order/actions to, that led to that obvious contradiction—the Bill of Rights, housed in the Constitution, that officials like Governor Murphy swore an oath to—would be the obvious reference to identify that contradiction; however, Governor Murphy wilfully ignored not only that contradiction but other constitutional rights, during an interview on Tucker Carlson, on April 15, 2020 (see attached flash drive for interview). Tucker Carlson asked Governor Murphy: “By what authority did you nullify the Bill of Rights in issuing this order [EO 107]?...” and the Governor responded, “I wasn’t thinking of the Bill of Rights when we did this.” This wilful ignorance of the Bill of Rights, along with the obvious contradiction—between closing Ms. Livesay’s business but not liquor stores—during a supposed health emergency, is direct evidence that proves the governor knew that he was violating the law, and any “reasonable official” would concur with this perspective because the contradiction is undeniable, along with the wilful neglect of the Bill of Rights to reference that contradiction. So Governor Murphy is either “plainly incompetent” or “willingly violated the law.”

Additionally, another glaring hypocrisy was when he signed EO 110: it allowed child care centers for essential workers to remain open, while child care centers and schools for “non-essential” workers were ordered closed, revealing the most egregious, insulting hypocrisy for those “non-essential” workers and their children.

Conclusion

[In the testimony of Ms. Livesay]: Governor Murphy ordered my business closed using EO 107. He kept it closed for over three months. I am not his property. I do not have a contract with him and he **can not**

commandeer and administer my property without right. He does not have the right to compel me to perform without paying me for my services; otherwise, that would be considered slavery. The government does not have the right to decide that I must sacrifice my livelihood, forcing me to face potential homelessness and putting me in the position where I can not live, survive or feed my children. Contracts make the law between a man or a woman. Here, I do not have a contract with the State of New Jersey or the Governor of New Jersey. Therefore, compensation is due to me for the financial losses I have incurred. Governor Murphy clearly violated the Due Process Clause of the Fourteenth and Fifth Amendment and Equal protection Clause of the Fourteenth Amendment.

USA Patriot Act, Section 802, defines a domestic terrorist, which involves acts dangerous to human life, to intimidate and coerce a civilian population, to influence the policy of a government by intimidation and coercion. This was mentioned in our complaint and Mr. Sarno has conveniently neglected to address this specific claim that was brought to his attention. Governor Murphy's actions accurately and sufficiently meet the criteria of a domestic terrorist and his treatment and punishment should reflect that. As displayed in Governor Murphy's tweets, provided in the Complaint, reflected a sample of his actions that can be accurately labeled as domestic terrorism.

Governor Murphy and Judy Persichilli of the NJDOH must be investigated and audited for false information and hoaxes on covid 19 statistics, using an unethical illegal faulty methodology, not based on science or standard medical practices. Reporting statistics for positive covid cases with no confirmed laboratory test, using unlicensed and medically untrained contact tracers to illegally diagnose people without any medical examination or confirmed lab test, possibly counting one individual infection multiple times as new positive cases, is clearly a shining example of this inaccurate methodology while also implementing unlawful covid 19 policies that require healthy people such as school children, state and government employees to quarantine who do not have a confirmed positive covid laboratory test. Forcing covid tests on healthy people in hospital settings when those individuals are visiting the hospitals for issues that are not related to covid such as a broken arm for example. When those individuals are denied medical services if they refuse the unnecessary covid test.

Encouraging the public through news conferences and social media to get tested for covid on a daily basis, even if they don't have symptoms, is not standard medical practice. It's perplexing to think our state medical officials and our Governor, acting at the behest of those medical officials, are not aware that the PCR tests and antigen tests are not a gold standard and can produce false positives, especially with a cycle threshold over 30. It's further disheartening observing Governor Murphy using these compromised statistics to implement unlawful, unconstitutional restrictions on the people of New Jersey and their businesses, livelihoods, childrens' schools and forced mask mandates, while also ignoring scientific studies that show masks are not effective in preventing the spread of viruses, ignoring the well known dangers of mask wearing and ignoring science that shows there is no asymptomatic spread but yet still forcing healthy people with no symptoms to wear masks, take covid tests with a faulty testing system, and follow covid 19 policies.

These harmful policies restrict: children from school, school sports, businesses, venues, government and state buildings and many others, all in the name of covid 19, which is based on manipulated statistics and reporting discrepancies, clearly discoverable to anyone that cares enough to investigate, even an inkling of their time into it.

NJDOH's Judy Persichilli not questioning extremely low flu cases and deaths—that were clearly recategorized as covid cases/deaths, made evident by the inverse relationship—but, instead, selectively reporting statistics

that only bolster the mainstream narrative, only leads to harsher covid restrictions. It's very clear that flu cases and deaths are being reported as covid cases and deaths. The fact that Governor Murphy and Ms. Persichilli are not addressing the unusually low flu cases (among the heavy offset of covid cases), coupled with the fact of faulty testing and the masks have not been proven to sufficiently prevent the spread of the virus, should indicate a heavy degree of culpability on their part.

Governor Murphy and Judy Persichilli's recent comments that were made publicly regarding a "new covid variant," stating they are very concerned about it and New Jerseyans must continue to follow these unconstitutional destructive covid policies, demonstrate their ambitions to continue down this unlawful, unconstitutional path. It is clear they are already setting the stage for more unconstitutional and destructive covid restrictions. It's safe to assume they will never stop. The courts need to recognize how these two people are working in tandem to continue to destroy the economy and the livelihood of New Jerseyans, they were accustomed to prior to covid-19, which is unacceptable to anyone's standards.

Governor Murphy and Judy Persichilli have publicly stated they want to Vaccinate 70% of New jerseyans with an experimental vaccine, which is the complete opposite of "protecting public health" claiming things will go back to normal, when it is a proven fact that the vaccine doesn't prevent transmission but only lessens symptoms so their goal is highly questionable and borders on nefarious, malicious intent. New Jerseyans were told these mitigations for covid 19 was all about preventing the spread, but the vaccine, for example, has not been shown to be effective at preventing the spread just as masks have not been proven to prevent the spread so their motives are highly questionable.

Governor Murphy does not deserve any qualified immunity after what he has done and continues to do to the people of New Jersey, Ms. Livesay, her offspring and Mr. DeSimone are just a small fraction of the many victims of the Governor's crimes against humanity. The courts can not and should not sweep this under the carpet, especially given the fact that other courts and the scientific community are beginning to recognize, in larger and larger numbers, the inconsistencies with all the actions taken by public officials to mitigate the "spread of the virus." More and more states are beginning to reopen their states at 100% capacity, with no mask mandates such as Texas and Mississippi and 15 others, which demonstrate a trend in moving toward realizing the damaging effect of these actions taken to mitigate the spread versus the supposed harmful effects of the virus. It would be extremely prudent for all public officials and judicial bodies to begin joining this trend now, so they are looked upon favorably in the court of public opinion in retrospect.

The constitutional violations set forth can not be more clear and this should be obvious to the courts regardless of civil procedural rules. Throughout Mr. Sarno's Motion to Dismiss, it is also abundantly clear after seeing all the examples of cases where people were seeking justice and fighting for their rights, the judges in those courts were not upholding their own oaths to the Constitution and were protecting Governor Murphy and other public officials' unlawful, unconstitutional actions. It is a complete and utter gaslighting, betrayal and disservice to the people and the Constitution of the United States of America. It is the courts duty to protect the people from overreaching, intrusive government, not condone it and make it easier for those officials to continue, or even indirectly assist, in their executive overreach. Allowing this type of behavior to continue will only create a much more dangerous world that all of the next generations will have to contend with.

In this entire context, governors' "protecting public health" is being used as an excuse for violating our constitutional rights and hiding behind the curtains of procedural civil rules. Governor Murphy clearly knew he was violating multiple constitutional rights when he made the grave decisions to deprive the people of life,

liberty, private property, Due process and subsequently the pursuit of happiness through multiple unlawful EO's, because his decisions were based on projections and assumptions, devoid of alternative scientific input. His decisions are and were arbitrary and unreasonable. The state simply could have just informed the public of the covid 19 threat and provided suggestions as to how to be cautious as was done with previous pandemics and as other states had done. Allowing the state to dictate the terms of their citizens' health historically has shown to never end well, when compared to other authoritarian, dictatorial regimes.

Governor Murphy, one year later still continues to oppress businesses, public schools, sports, venues and the general public from accessing certain government and state buildings such as courthouses, unemployment offices, social security offices, child support offices, social services, DMV which are all public buildings that provide essential services for the people, making it difficult for the people to conduct their affairs. These buildings should be open to the public. They are all following the NJDOH guidelines which still continue to unlawfully quarantine and isolate healthy people in those same government and state settings including schools which follow the New Jersey Department of Health's unscientific, unlawful and unnecessary recommendations in a highly debatable state of emergency for a year, all based on obvious inaccurate statistics of covid 19 cases and deaths. It's truly the biggest scam and crime against humanity in the history of the world.

There is no legal president or legal authority for the government to "lock down" it's citizens. The United States Supreme Court has ruled in *Shelton v. Tucker* 364 U.S 479 (1960) that the government cannot broadly curtail personal liberty. And there is no legal precedent or authority for locking down healthy citizens. The police power of quarantine is only possible against ill persons. *Jew Ho v. Williamson* 103 F. 10 (1900) and *Wong Wai v. Williamson* 103 F. 384 (1900)

Along with all of the other relief claims we are kindly asking the court to grant, the court should additionally terminate Governor Murphy's emergency power authority immediately, considering it has no more relevant purpose in mitigating the spread of a virus that is no more dangerous than a seasonal flu but his actions continue to cause more harm than good. Additionally, the Court should prohibit the Governor from running for office for a second term, due to the sheer, obvious, dangerous behaviors imposed on the general public.

Personal Statement

My name is Christine Livesay and I'm a 46 year old woman, single mom to three dependent offspring. I came from a broken family and was raised by a single mother who could hardly provide the bare essentials. I started working at the age of 14 and have been working hard ever since. When I first became a mom myself, I always had one goal in mind which was to provide my children with a better life so they did not have to endure the struggles that I had suffered growing up. I always worked hard but it was never enough. I started my business One Touch, approximately 6 1/2 years ago. I rented a room in a salon where I conducted my business for Three years. Within those Three years my business had grown and I realized that I was really good at what I do, and I loved helping people. I decided to take the plunge to expand my business to a Main Street location in a storefront where I was able to hire Two new therapists. This did not come easy and with great sacrifice. I worked hard Seven days a week and even suffered physical pain having to put ice packs on my hands and wrists due to overworking and the nature of my profession. My hard work paid off and my business was successful and still growing everyday. One Touch had a great reputation carrying 63 Five star reviews. I was proud of my accomplishments, so you could imagine the devastation that was caused to myself, my children and my business when Governor Murphy executed EO 107 which violated my rights and had crippling effects on every aspect of my life and my business. EO 107 crushed many dreams and canceled out all the hard work, blood, sweat and tears that many business owners had dedicated into their businesses which is their lives and the key to their livelihoods.

Covid 19 did not do this. Governor Murphy's bad decisions did, and he should be held accountable for his actions.

Christine Livesay



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